IN THE

SUPREME COURT OF THE UNITED STATES

78-1265

MIGUEL NAZRENO VILLANUEVA,

Petitioner-Appellant

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Robert J. Carluccio
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Hoboken, New Jersey 07030

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Appellant

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Miguel Nazreno Villanueva prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on November 17, 1978 (Court of Appeals Opinion, infra, p.A11).

OPINIONS BELOW

The opinion of the court of appeals is included in the Appendix beginning at page A11. The opinion of the Board of Immigration Appeals is included in the Appendix at page A1. The decision of the Immigration and Naturalization Service is included at Page A11.

JURISDICTION

The judgment of the court of appeals was entered on November 17, 1978. The jurisdiction of this court rests on 28 U.S.C. 1254 (1) (1966).

QUESTIONS PRESENTED

1. The District Director of the Department of Immigration along with the Hearing Officer and the Board of Appeals erroneously interpreted Section 243(h) of the Immigration Act as it applies to the petitioner when they determined he was not eligible for relief due to persecution for political reasons.

2. The District Director of the Department of Immigration along with the Hearing Officer and the Board of Appeals erroneously interpreted Section 243(h) of the Immigration Act as it applies to the petitioner when they determined he was not eligible for relief due to persecution on account of membership in a particular social group.

3. Whether petitioner's rights have been violated, as the decision of the Courts below violates the intent of Section 243(h) of the Immigration Act. Pub.

L. 89-236 Sec. 11(F(, 79 Stat. 918, 8USCA 1253.

STATUTE INVOLVED

The relevant portion of Section 243 (h) of the Immigration and Nationality Act is:

The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion, or political opinion and for such period of time as he deems to be necessary for such reason.

STATEMENT OF THE CASE

Petitioner entered the United States on or about December 13, 1969 as a non-immigrant in transit without visa. In an Order dated February 3, 1971, an Immigration Judge found the petitioner deportable as an immigrant who had remained beyond his stay and granted him

the privilege of voluntary departure. Deportation was deferred at the request of the United States Attorney for the Southern District of New York in order that the petitioner might give evidence in various narcotics cases. The request for deferral of deportation was withdrawn in a letter from the United States Attorney on June 16, 1975.

On June 25, 1975, the petitioner submitted a request for asylum in the United States which was denied by the District Director on February 7, 1977. On October 14, 1975, an Immigration Judge granted a Motion to Reopen the deportation proceedings which resulted in a hearing on February 14 and 22, 1977. The application for withholding of deportation was based on Section 243(h) of the Immigration Act. The relief sought was denied.

An Appeal was filed with the Board

of Immigration Appeals and an adverse decision was rendered on November 17, 1977. The petitioner then filed a Petition for Review with the Court of Appeals. The Court of Appeals affirmed the decision of the Board of Immigration Appeals on November 17, 1978, without a written opinion.

The facts of the case are that the petitioner is a native and citizen of the Philippines and he entered the United States on or about December 13, 1969 as a non-immigrant in transit without Visa. At the time of the petitioner's entry into this country he was connected with an International organization involved in the smuggling of narcotics.

The petitioner's role in this scheme was minor. He was recruited from the subpoverty economy of Manila and he entered the United States with narcotics strapped around his body. In return for these ser-

vices he was given a trip to the United States and a few hundred dollars.

Upon his entry into the United States, he was arrested by the Federal Authorities. He immediately agreed to cooperate with the government in its investigation. As a result of his cooperation, which included testimony, six United States narcotics violators were convicted. The petitioner's Grand Jury testimony led to the indictment of a number of Philippine nationals who were principals in the operation of the smuggling ring. One of these indicted foreigners was arrested in Hong Kong, extradited, tried, convicted, and is still serving a jail sentence with the rest of those convicted in those proceedings.

The United States does not have an Extradition Treaty with the Philippines. The remaining principals in this ring are still at large in the Philippines. Among

them there are several principals who remained politically well connected, one of them being a former Vice-Governor of one of the Philippines Provinces.

After cooperating with the federal authorities, the petitioner plead guilty to two tax counts and was placed on probation. Since that time the petitioner has had no further experience with any law enforcement agency.

The petitioner has a well founded fear that he will be persecuted should he return to the Philippines. This fear is supported by an Affidavit which was filed by Charles Updike on the petitioner's behalf. Mr. Updike is the federal attorney who prosecuted the various cases connected with this narcotics ring. He has traveled to the Philippines and has first hand knowledge with respect to the principals in-

volved. The petitioner has been informed by his wife that after his application for asylum was denied, two men, who were unknown to her, came to her house and asked her when her husband was coming home, since he had lost his appeal.

REASONS FOR GRANTING THE WRIT

I

The question presented is whether the District Director of the Department of Immigration, along with the Hearing Officer and the Board of Appeals erroneously interpreted Section 243(h) of the Immigration Act as it applies to the petitioner when they determined he was not eligible for relief under Section 243(h) of the Immigration Act.

Prior to 1950, the statutes pertaining to deportation had no pvovinces for deferment because of anticipation of persecution in the country of destination. In the absence of such

statutory authority the courts ruled that there was no absolute right to claim asylum in this country. Immigration Law and Procedure, Gordon & Rosenfeld, Vol. I, Pg. 5-122. In 1950 a specific mandate was enacted, enjoining the Attorney General from deporting an alien to a country where the deportee would be subject to physical persecution. Sec. 23 Internal Security Act of 1950, 64 Stat. 987. A 1952 modification pointed out that the Attorney General had a power which was discretionary in nature and this power could be used to withhold deportation in such cases. Sec. 243 (h), Act of 1952, 66 Stat. 214. In 1965 an amendment was adopted and currently "The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the

alien would be subject to persecution on account of race, religion, or political opinion and for such period of time as he deems to be necessary for such reason." Pub. L. 89-236 Sec. 11 (f), 79 Stat. 918, 8USCA 1253.

From the foregoing it is clear that the Congress based upon humanitarian feelings sought to protect aliens who would be persecuted on account of race, religion or political opinion. However, with respect to political opinion, does the political opinion upon which persecution is based have to be held by the alien or by the government or people in government in the country to which the alien is deported. Stated, more simply, is the petitioner entitled to relief under this section if he is to be killed not because of a political belief he holds but because of a belief held by those in political power in the Philippines. This is the issue at bar.

In order to be eligible for the relief requested under 243(h), the petitioner has the burden of showing first that persecution will take place and, then, that it be for the reasons allowed.

An alien has the burden of presenting evidence showing a "clear probability of persecution." Cheng Kai Fu v. INS, 386 F.2d 750. The expression "well founded fear of being the victim of persecution for reasons of race, religion, nationality or political opinion" means that a person has either been actually a victim of persecution or can show good reason why he fears persecution. United Nations Economic and Social Council, Report of the Ad Hoc Committee on Statelessness, February 17, 1950. Some sort of showing must be made and this can ordinarily be done by objective evidence. The claimants own testimony as

to the facts will sometimes be all that is available, but the crucial question is whether the testimony, if accepted as true, makes out a realistic likelihood that he will be persecuted. Matter of Dunar 14 I & N Dec. 310 (BIA 1973).

In the case at bar no one has seriously raised the issue that the petitioner will not be in danger if he should return to the Philippines. The affidavit, which was annexed to the petitioner, states that the opinion of Charles Updike, the U.S. Attorney in charge of the investigation, that the petitioner would be in danger should he return to the Philippines. The dissenting opinion of Irving A. Appleman, a member of the Board of Immigration Appeals, also states a belief that the petitioner stands every likelihood of being in personal danger upon his return

to the Philippines.

It is the petitioner's contention that he will be subject to persecution by those in political power upon his return to his native country. An alien must show that the threatened persecution will be at the hands of the government or, if persecution based on the alien's membership in a class encompassed by section 243(h) is threatened by an individual or group not connected with any government, that the government concerned is either unwilling or unable to control the persecutors. Matter of Pierre, Interior Decision 2433 (BIA 1975). The narcotics ring that used the petitioner as a courier was comprised of many Philippinos who were politically well connected, one of them being a Vice-Governor of a Province. These individuals were not extradited and remain free. Through the use of

their political power it will be very easy to persecute the petitioner or at least use their influence with the government so that the government will be unwilling or unable to do anything with respect to the persecution of the petitioner. The preceding argument must also be looked at under current conditions, more specifically, the fact that the Philippines is under Martial Law. This condition enhances the power of those who would persecute the petitioner.

The court should recognize that the dictates of political power is nothing more than the enforcement of policies set by those in power. Can those in power, who wish to carry out their own purposes under the guise of government administration for their own purposes, not do so (e.g. the Administration of Idi Amin). To speak of persecution on account of political opinion

and deal only with the ideals of philosophies on which governments are based is to ignore the practicalities and personalities, which, more often than not, effect the day to day happenings which are experienced. If the petitioner was killed by someone who had the use of political power, would he not have lost his life on account of that power. Would it not be a vague distinction to say that those in political power did not cause his death since they were acting in a personal capacity.

It is the petitioner's contention that those who seek to persecute him have the political power to harm him or subvert any governmental attempt to protect him and this use of power is the political reason connected to his imminent persecution should he be returned to the Philippines . Therefore, he should be afforded the relief under Section

243(h) and his deportation should be deferred.

II

The District Director of the Department of Immigration along with the Hearing Officer and Board of Appeals erroneously interpreted Section 243 (h) of the Immigration Act as it applies to the petitioner when they determined he was not eligible for relief due to persecution on account of membership in a particular social group.

In order to be eligible for relief under Section 243(h) of the Immigration and Nationality Act, the petitioner must "show a well founded fear that their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion." Zamora v. I.N.S. 534 F2d 1055 (1976) at 1058. Moreover the alien must show that the

threatened persecution will be at the hands of the government or, if persecution based on the alien's membership in a class encompassed by Section 243(h) is threatened by an individual or group not connected with any government, that the government concerned is either unwilling or unable to control the persecutors. Matter of Pierre, Interim Decision 2433 (BIA 1975); Matter of Maccaud 14 I & N 429 (BIA 1973).

In the case at bar the petitioner is a member of a class who has caused financial harm to certain individuals who are influential politically in the Philippines. Aside from causing them financial harm, certain individuals were given jail sentences. These individuals also have the political influence to subvert any attempt by the government to protect the petitioner.

Therefore, the petitioner should

be afforded the relief under Section 243(h) of the Immigration and Nationality Act.

III

Whether petitioner's rights have been violated, as the decision of the Courts below violates the intent of Section 243(h) of the Immigration Act. Pub. L. 89-236 Sec. 11(f), 79 Stat. 918, 8USCA 1253.

It would seem harsh and inequitable to deny the Petitioner relief under Section 243(h) in light of the particular circumstances in this case. A review of the legislative history of Section 243(h) shows that the intent of this Section is to grant asylum to those who are in danger of persecution if they should be expelled to the country to which they came. In the case at bar the petitioner would most definitely be in danger of physical harm or death should he be returned to the Philippines.

(See Board Member Appleman's dissenting opinion, p.A6. This situation is unjust and inequitable due to the fact that the petitioner would not be in danger if it were not for the assistance he gave to the United States Attorneys in prosecuting various narcotics violators.

A synopsis of this case can be stated very briefly and that is that the petitioner has placed himself in jeopardy to assist the United States and the United States, after using the petitioner for their purposes, is seeking to return petitioner to a land wherein he will most definitely be subject to physical harm. It would seem that this violates the concept of human rights which are currently so adamantly espoused.

CONCLUSION

Petitioner urges this honored Court to consider the plight of the petitioner in that he placed himself in

severe jeopardy by cooperating with the United States Authorities in the prosecution of various members in a drug ring and has now been denied a request for asylum, which most likely would result in his injury or death should he be deported to the Philippines. Based upon the foregoing, the petitioner respectfully requests that he be considered eligible for the relief afforded in Section 243(h) of the Immigration and Nationality Act.

Respectfully Submitted,

Robert Carluccio

ROBERT J. CARLUCCIO
One Newark Street
Hoboken, New Jersey 07030

November 17, 1977

File: A18 389 714 - New York
In re: MIGUEL N. VILLANUEVA aka SULPIZO L. LADERA

IN DEPORTATION PROCEEDINGS
APPEAL
ON BEHALF OF RESPONDENT:
George R. Allen, Esq.
736 Bergen Avenue
Jersey City, N.J. 07306

ON BEHALF OF I&N SERVICE:
Sabri Kandah
Appellate Trial Attorney

ORAL ARGUMENT: September 12, 1977

CHARGE:
Order: Sec. 241(a)(2), I&N Act (8 U.S.C. 1251(a)(2))- Non-immigrant-remained longer than permitted.
APPLICATION: Withholding of deportation pursuant to section 243(h) of the I&N Act.

In a decision entered on February 24, 1977, following a reopened deportation hearing, an immigration judge found the respondent deportable as charged and denied his application for withholding of deportation under section 243(h) of the Immigration and Nationality Act. The respondent declined to make application for voluntary departure and was ordered to the Philippines. The respondent has

appealed from the denial of section 243 (h) relief. The appeal will be dismissed.

The respondent, a native and citizen of the Philippines, entered the United States on or about December 13, 1969, as a nonimmigrant in transit without visa. In an order dated February 3, 1971, an immigration judge found the respondent deportable as an immigrant who has remained beyond the authorized length of his stay and granted him the privilege of voluntary departure.

The respondent's deportation appears to have been deferred at the request of the Office of the United States Attorney for the Southern District of New York in order that the respondent might testify at the trial of a fugitive co-defendant in a criminal prosecution involving an international narcotics smuggling operation. The respondent was convicted in 1971 of a narcotics violation arising out of his participation in that smuggling operation and was given a suspended sentence as a result of his active assistance from the time of his arrest in the Government's investigation into the activities of the ring. Undisputed evidence in the record reveals that the respondent's cooperation led to the arrest and conviction of a number of narcotics violators and to the indictment of still other participants in the ring who were, and remain, beyond the jurisdiction of United States courts. The United States Attorney withdrew his request that the respondent's deportation be deferred in a letter to the Service dated June 16, 1975 (Ex. 6).

In support of his application for withholding of deportation under section 243(h), the respondent argues that should the deportation order be executed, he will be in grave danger of bodily harm or death upon his return to the Philippines as a result of his cooperation with the United States Government's investigation and prosecution of the narcotics smuggling ring. He points out that a number of Philippine national principals in the narcotics ring, including an alleged former vice-governor of a Philippine province, remain at large in the Philippines. The respondent further alleges that threats of retribution against him have been made to members of his immediate family who have continued to reside in the Philippines.

In oral argument before the Board, counsel for the respondent expressed concern that an affidavit submitted by a former Assistant United States Attorney who had played an active role in the Government's investigation and prosecution of the narcotics ring was not mentioned in the immigration judge's decision and may have been overlooked by him in arriving at his decision. The affidavit (Ex. 3) acknowledged the respondent's cooperation with the Government in its successful prosecution of a number of principals in the ring and expressed the affiant's belief that the respondent's personal security would be in jeopardy as a result of his assistance if he were deported to the Philippines.

We have carefully examined the entire record, including the affidavit to which counsel referred, and are satisfied that section 243(h) has no application to the undisputed facts of this case.

To establish eligibility for withholding of deportation under section 243 (h), an alien subject to deportation must show a well-founded fear that he will be subject to persecution in the country of destination on account of his race, religion, nationality, membership in a particular social group, or political opinion. See Matter of Dunar, 14 I&N Dec. 310 (BIA 1973). Moreover, the alien must show that the threatened persecution will be at the hands of the government or, if persecution based on the alien's membership in a class encompassed by section 243(h) is threatened by an individual or group not connected with any government, that the government concerned is either unwilling or unable to control the persecutors. See Matter of Pierre, Interim Decision 2433 (BIA 1975); Matter of Maccaud, 14 I&N Dec. 429 (BIA 1973); Matter of Tan, 12 I&N Dec. 564 (BIA 1967); Matter of Eusaph, 10 I&N Dec. 453 (BIA 1964).

The respondent has the burden of establishing his claim under section 243(h) of the Act. Matter of Dunar, supra. We find that the respondent has not made the requisite showing to support his eligibility for relief under section 243(h) and has, therefore, failed to sustain his burden.

The immigration judge's conclusion of law is correct and accordingly, we have no alternative but to dismiss the appeal.

ORDER: The appeal is dismissed.

David L. Milhollan,
Chairman

File: A18 389 714 - New York

In re: MIGUEL N. VILLANUEVA aka
SULPIZO L. LADERA

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:
George R. Allen, Esq.
736 Bergen Avenue
Jersey City, New Jersey 07306

ON BEHALF OF I&N SERVICE:
Sabri Kandah
Appellate Trial Attorney

ORAL ARGUMENT: September 12, 1977

CHARGE:

Order: Section 241(a)(2), I&N ACT (8U.S.C. 1251(a)(2)) - Non-immigrant - remained longer than permitted.

APPLICATION: Withholding of deportation pursuant to section 243(h) of the I&N Act.

DISSENTING OPINION: Irving A. Appleman, Board Member

I respectfully dissent.

I am in agreement with that portion of the majority decision which holds that to support a section 243(h) claim, the "persecution" must involve either a threat by the foreign government itself or a danger which the foreign government is either unable or unwilling to control. Clearly the threat reflected by this record is not of that nature. However, the affidavit by Charles B. Updike (Ex. 3), a former Assistant U.S. Attorney for the Southern District of New York, attests to the respondent's cooperation in the prosecution of drug traffickers, and notes that some of the foreign defendants are still at large in the Philippines. One of them is a former Vice-Governor of one of the Philippine provinces. The affidavit leaves no doubt that if the respondent returns to the Philippines, his personal security will be in jeopardy.

Updike's affidavit is corroborated by Exhibit 6, a statement addressed to the Immigration and Naturalization Service by the Chief, Narcotics Unit, Office of the U.S. Attorney, Southern District of New York, to the effect that it had not been possible to extradite a named individual from the Philippines, in whose case it was planned to have the respondent testify as a prosecution witness.

I am convinced that there is every likelihood that this respondent will be in personal danger upon his return to the Philippines. At the hearing he sought suspension of deportation. He is not eligible for that relief, apart from other considerations, because of a conviction in 1971 of a narcotics offense.

However, that conviction preceded the five years of good moral character required by the statute for eligibility for voluntary departure. Notwithstanding the fact that he failed to apply for this relief at the hearing, I would permit the respondent at least the opportunity of proceeding on his own to some country other than the Philippines. I would therefore grant voluntary departure within a period of 30 days, or within such further extension of time as the District Director saw fit to grant.

/s/ Irving A. Appleman
Irving A. Appleman
Board Member

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION & NATURALIZATION SERVICE
20 WEST BROADWAY, NEW YORK, N.Y.10007

IN THE MATTER OF :
MIGUEL NAZRENO VILLANUEVA, :
Respondent. :

File No. A18 389 714

AFFIDAVIT

STATE OF NEW YORK) SS.
COUNTY OF NEW YORK)

CHARLES B. UPDIKE, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am an attorney licensed to practice law in the State of New York and am currently working at the firm of Williamson & Schoeman, at 60 East 42nd Street, New York, New York.

2. From 1968 through 1972, I was an Assistant United States Attorney in the Southern District of New York, and while there, I prosecuted a substantial number of international narcotics cases and was the Acting Chief of the narcotics unit before leaving government service to enter private practice.

3. Miguel Villanueva was arrested in New York City at the culmination of an undercover investigation of a major New York drug trafficker because Villanueva was present during the delivery of a kilogram of heroin. Unknown to the Bureau of Narcotics and Dangerous Drugs prior to his arrest, Villanueva was only one of dozens of couriers who had brought drugs into the United States in specially made body packs. Like the other couriers, Villanueva was an essentially honest citizen recruited from the subpoverty economy of Manila with the tantalizing offer of an all expenses paid trip to the United States.

4. Immediately upon his arrest, Villanueva agreed to cooperate with the government in its continuing investigation. In addition to his assistance in convincting the persons with whom he was arrested, Villanueva's cooperation, including testimony, led directly to the arrest, trial and conviction of six U.S. narcotics violators in two separate cases.

5. Villanueva's Grand Jury testimony led to the indictment of a number of Philippine nationals who were the principals in the operation of the smuggling ring. One of these indicted foreigners was arrested in Hong Kong, extradited, tried and convicted. Villanueva also testified at that trial.

6. The United States does not have an extradition treaty with the Philippines. The remaining foreign defendants, therefore, could not be brought to justice and to the best of my knowledge are still at large in the Philippines. Among them is a Philippine attorney, who is a former Vice-Governor of one of the Philippine provinces. He was then and, I asume, remains politically well-connected. In my judgment either he, or any of the named Philippine defendants, would be likely to seek revenge upon Mr. Villanueva if he is returned to the Philippines.

7. It is my belief that if Mr. Villanueva is returned to the Philippines, his personal security will be in jeopardy.

Sworn and Subscribed to
before me this 3rd day
of February, 1977.

/s/ Charles B. Updi
CHARLES B. UPDIKE

/s/ George R. Allen
GEORGE R. ALLEN
An Attorney at Law
of the State of New Jersey

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 78-1477

MIGUEL NAZRENO VILLANUEVA,
Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

Petition for Review
Board of Immigration Appeals

Submitted Under Third Circuit Rule 12(6)
November 17, 1978
Before: ALDISERT and HUNTER, Circuit Judges,
and GERRY, District Judge. *

JUDGMENT ORDER

After considering the contentions of the petitioner for review and of the Immigration and Naturalization Service, it is

ADJUDGED AND ORDERED that the petition to vacate and set aside the order of the Board of Immigration Appeals be and the same is hereby denied.

BY THE COURT,

/s/
Circuit Judge

Attest:

/s/ Thomas F. Quinn
Thomas F. Quinn, Clerk

Dated: November 17, 1978

* Honorable John F. Gerry, of the United States District Court for the District of New Jersey, sitting by designation.

Certified as a true copy and issued in lieu of a formal mandate on December 11, 1978.

Test: M. Elizabeth Ferguson

Chief Deputy Clerk, U.S. Court of Appeals
for the Third Circuit

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A18 389 714 - New York

In the Matter of)

VILLANUEVA, Miguel N.)

aka

LADERA, Sulpizo L.)

-Respondent-)

CHARGE: I&N Act - Section 241(a)(2) (8 USC 1251(a)(2)) - nonimmigrant, remained longer

APPLICATION: I&N Act - Section 243 (h) - stay of deportation

Dated: February 24, 1977

IN DEPORTATION PROCEEDINGS

IN BEHALF OF RESPONDENT
George R. Allen, Esq.
736 Bergen Avenue
Jersey City, New Jersey 07306

IN BEHALF OF SERVICE
James Hartman, Esq.
Trial Attorney
New York, N.Y. 10007

DECISION OF THE IMMIGRATION JUDGE

In a reopened hearing in deportation proceedings the respondent applied for a stay of deportation pursuant to Section 243(h) of the Immigration and

Nationality Act. He is a 46 year old alien, native and citizen of the Philippines who last arrived in the United States at New York on or about December 13, 1969 as a nonimmigrant in transit without visa. An order granting voluntary departure, with an alternate order of deportation to the Philippines, was granted him on February 3, 1971 at New York by the Immigration Judge.

The respondent's claim for stay of deportation pursuant to Section 243(h) of the Immigration and Nationality Act relies upon the fact that he testified at New York for the Government in about 1971 concerning illicit narcotic operations, as a result of which if he were to return to the Philippines he would be harmed there by persons who are part of the narcotics operation against whom he had testified. In that regard he refers to a person who was formerly a vice-governor of a province but who now is no longer in the Government of the Philippines and another person who is alledgedly a special agent for some Philippine agency. It may be noted that the respondent claimed at the hearing that he assumed the name of Miguel Nazreno Villanueva in order to shield his identity in order to avoid retribution because of his testimony in the prosecution of certain narcotics malefactors in about 1971. However, the respondent's Philippine passport is in that name and was issued in 1969. He entered the United States in 1970 in the use of that very same name and still bears that identity. It appears that the respondent, in 1971, was convicted of a narcotics violation in New York and was given a suspended sentence and one year probation.

The respondent claimed that someone had contacted his wife in the Philippines to ask for the respondent's address. It appears that the respondent's wife and seven children reside in the Philippines and have not been harmed. The respondent does not claim that he will be persecuted because of race, religion, or political opinion by anyone in the Government if he were to return to the Philippines. The respondent had made a claim to political asylum, which matter was referred to the Office of Refugee and Migration Affairs of the United States State Department. They found that the respondent did not have a well-founded fear of persecution on account of race, religion, nationality, political opinion or membership in a particular social group upon return to the Philippines.

While not relying on or giving weight to the opinion of the State Department in connection with the Respondent's application for stay of deportation, we must on the record before us find that respondent has failed to establish a prima facie showing of a well grounded fear that life or freedom would be threatened in the Philippines on account of his race, religion, nationality, membership in a particular social group or political opinion. It is, therefore, concluded that he will not be subject to persecution if deported there. See Matter of Dunar, 14 I&N Dec. 310 (BIA, 1973); Matter of Bohmwald, 14 I&N Dec. 408.

The respondent was asked if he again sought the privilege of voluntary departure. He declined to make such application.

ORDER: IT IS ORDERED that the respondent be deported to the Philippines on the charge contained in the Order to Show Cause.

IT IS FURTHER ORDERED that the application for temporary withholding of deportation under Section 243(h) of the Immigration and Nationality Act be denied.

/s/ Allan A. Shader
ALLAN A. SHADER
Immigration Judge